



U.S. Department of Justice

Immigration and Naturalization Service

VU

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted] **Public Copy**

File: SRC-98-206-51156

Office: Texas Service Center

Date: JAN 11 2000

IN RE: Petitioner:
Beneficiary:

[Redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

[Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

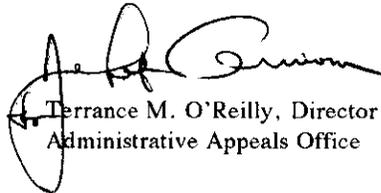
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is engaged primarily in researching new technological advances in the civil engineering and construction industry and implementing such technology at its foreign locations. It seeks to employ the beneficiary temporarily in the United States as its president. The director determined that the petitioner had not established that sufficient physical premises to house the new office had been secured, that the foreign entity had made a sufficient investment in the U.S. entity, or that the beneficiary would be employed in a primarily managerial or executive capacity.

On appeal, counsel submits a brief in rebuttal to the director's findings.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

Title 8 C.F.R. 214.2 (1)(3)(v) states that if the petition indicates that the beneficiary is coming to the United States as a manager or executive to open or to be employed in a new office in the United States, the petitioner shall submit evidence that:

A) Sufficient physical premises to house the new office have been secured;

B) The beneficiary has been employed for one continuous year in the three year period preceding the filing of the petition in an executive or managerial capacity and that the proposed employment involved executive or managerial authority over the new operation; and

C) The intended United States operation, within one year of the approval of the petition, will support an executive or managerial position as defined in paragraphs (1)(1)(ii)(B) or (C) of this section, supported by information regarding:

(1) The proposed nature of the office describing the scope of the entity, its organizational structure, and its financial goals;

(2) The size of the United States investment and the financial ability of the foreign entity to remunerate the beneficiary and to commence doing business in the United States; and

(3) The organizational structure of the foreign entity.

The United States petitioner was established in 1998 and states that it is an affiliate of [REDACTED] located in [REDACTED]. The petitioner seeks to employ the beneficiary for a two-year period at an annual salary of \$30,000.

At issue in this proceeding is whether sufficient physical premises to house the new office have been secured.

In his decision, the director noted that the petitioner had not submitted a copy of a lease or purchase contract as requested.

On appeal, counsel states in part that:

Petitioner is providing a copy of the Sublease agreement it entered into to facilitate the United States entity...The sublease should evidence that the petitioner has secured sufficient physical premises on which to conduct business...

The petitioner has submitted evidence of a sublease dated November 18, 1998. Title 8 C.F.R. 103.2(b)(12) states that an application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. As the premises were secured after the filing date of the present petition on July 8, 1998, the additional evidence does not overcome the objection of the director. For this reason, the petition may not be approved.

Another issue in this proceeding is whether the foreign entity has made a sufficient investment in the U.S. entity.

In his decision, the director noted that the wire transfers from the foreign entity consisted of minimal monetary amounts that appeared to be for the beneficiary rather than for supporting the new business.

On appeal, counsel states in part that:

The total of monies sent to the United States entity through the beneficiary is the amount of \$12,723.90.

More recently, the foreign entity has transferred substantial capitalization in the form of cash funding for the United States entity. On November 26, 1998, a wire transfer was sent to [REDACTED] to its Bank One Account No. [REDACTED] in the amount of \$20,000.00.

The petitioner has submitted evidence of a wire transfer for \$20,000 dated November 26, 1998. As previously noted, Title 8 C.F.R. 103.2(b)(12) states that an application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. As the funds in the amount of \$20,000 were transferred after the filing date of the present petition on July 8, 1998, the additional evidence does not overcome the objection of the director. For this additional reason, the petition may not be approved.

Another issue in this proceeding is whether the beneficiary will be employed in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

"Managerial capacity" means an assignment within an organization in which the employee primarily-

i. manages the organization, or a department, subdivision, function, or component of the organization;

ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by

virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

"Executive capacity" means an assignment within an organization in which the employee primarily-

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision-making; and
- iv. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In his decision, the director noted that the petitioner had not submitted an explanation of the anticipated employees at the end of the one year start up, including their job titles and proposed duties.

On appeal, counsel states in part that:

Please refer to the Business Plan...which states in pertinent part, the personnel proposal includes one civil engineer specializing in structural calculus, one bilingual civil engineer, a project supervisor (Sight Foreman) and two welders.

Page 4 of the business plan indicates that one person may fill the two civil engineer positions if that person has the skills to perform the duties of both. The duties described for the civil engineer specializing in structural calculus are described in part as follows:

An investigation will be conducted on the latest advances concerning the calculations of spacial metallic structures, which investigation implies the use of software and adequate computer equipment. [The civil engineer] will present a detailed report after three months in which he will show the results of the investigation...Once this investigation has been

concluded, we will proceed to market the software and equipment in [REDACTED] through capable personnel. The engineer in charge of this project will also oversee the acquisition and exporting of said software and equipment required in [REDACTED] who under the supervision of [the beneficiary] will do the purchasing and the exporting of said equipment and software to [REDACTED]. It is estimated that this phase will be realized in a period of nine months.

The duties for the bilingual civil engineer are described in the business plan as follows:

A study will be conducted in the State of Texas...which has to do with the commercialization of pre-assembled tubular metallic structures...The duration of this phase will be approximately three months and will be afforded the technical expertise of [the beneficiary].

The duties for the sight foreman and two welders are described in the business plan as follows:

The next step is the purchase of material in Venezuela and the fabricating of the pre-assembled components. Simultaneously, two welding companies will be contracted, along with a field supervisor who will oversee the programming, coordination and directing of all assembling activities. With this crew we will be able to assemble a medium-sized structure.

The record indicates that one engineer may perform a nine-month investigation on the latest advances concerning the calculations of spacial metallic structure and a subsequent three-month study on the commercialization of pre-assembled tubular metallic structures. As such, at the end of the initial one-year period, the beneficiary would have only one subordinate employee. The duties described for the beneficiary by counsel in his letter dated June 29, 1998, such as "direct research activities and establish goals and set policies" are too general to convey any understanding of exactly what the beneficiary's actual daily activities will be. It is incumbent upon the petitioner to provide a detailed and comprehensive description of the beneficiary's duties to establish that he has been and will be acting in a managerial or executive capacity. The record contains no specific details regarding the beneficiary's foreign employment such as a list of the foreign employees supervised by the beneficiary that identifies their names and duties. The record as presently constituted does not establish that the beneficiary will function at a senior level within an organizational hierarchy other than in position title. The record as presently constituted does not establish that the beneficiary will supervise a subordinate staff of professional, managerial, or

supervisory personnel who will relieve him from performing nonqualifying duties. For this additional reason, the petition may not be approved.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the beneficiary has been employed abroad in a primarily managerial or executive capacity. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.